



City of Rockville

## MEMORANDUM

April 7, 2009

TO: The Mayor and Council

FROM: Debra Yerg Daniel, City Attorney

SUBJECT: Telephone Conferencing

### **I. Introduction**

At your February 23, 2009 meeting, an issue was raised regarding the legality of a member of the Mayor and Council telephone conferencing into a Mayor and Council meeting. I was requested to look into the matter and get back to the Mayor and Council.

### **II. Legal Analysis**

The City Charter provides that the "Council shall meet at some convenient public place in said City as often as may be necessary to discharge the duties of its office, not less, however, than once in every month."<sup>1</sup> In addition, under the Maryland Open Meetings Act, it states that "Except as otherwise expressly provided in this subtitle, a public body shall meet in open session."<sup>2</sup> The issue is whether the term "meet" includes telephone conferencing.

While the City Charter does not provide a definition of the term "meet," the Open Meetings Act defines "meet" as follows: "to convene a quorum of a public body for the consideration or

---

<sup>1</sup> Rockville City Charter, § 2(a) (emphasis added).

<sup>2</sup> § 10-505, State Government Article of the Maryland State Annotated Code (2004) (emphasis added).

transaction of public business.”<sup>3</sup> The Open Meetings Act Manual expands on that definition by stating that

Although the presence of a quorum in the same room would ordinarily characterize a “meeting,” joint physical presence is not a prerequisite to the convening of a meeting. For example, a telephone conference call in which a quorum of members is conducting business simultaneously is a “meeting” that must comply with the Act. If a public body meets in open session via telephone or video conference, it must afford the public access to the discussion. A telephone conference is open to the public if a speaker-phone is available at an announced location; a video conference, if a monitor is similarly available.<sup>4</sup>

Thus, under the City Charter, telephone conferencing is not prohibited and, under the Open Meetings Law, telephone conferencing is permitted as long as it is open to the public.<sup>5</sup>

### **III. Issues to Consider**

Since telephone conferencing is legally permissible, it is within the Mayor and Council’s sound discretion whether to include telephone conferencing as part of the Mayor and Council meetings.

The Mayor and Council should first decide whether it wants to permit its members to telephone conference into meetings. If the Mayor and Council, as a matter of policy, decide not to permit telephone conferencing into meetings, then the discussion ends. However, if the Mayor and Council decide to permit telephone conferencing into meetings, you may want to take into account and/or address the following:

1. Should there be a limit on how many members may telephone conference into a meeting at a time? If so, how is preference given if more than one member requests to telephone conference into a meeting at a time?
2. Should there be a limit on how many times a member may telephone conference in a calendar year?
3. Should a member who is telephone conferencing be limited to participation in the discussion but not be allowed to vote (would require a quorum physically present at the meeting)? Or should a member telephone conferencing only be allowed to vote to break a tie?
4. Should a member only be allowed to telephone conference if a quorum is needed (would require that the member telephone conferencing be allowed to vote)? Or

---

<sup>3</sup> *Id.*, at § 10-502(g).

<sup>4</sup> Open Meetings Act Manual, Sixth Edition, October 2006, p. 7. This Manual can be found on the Office of Attorney General’s website at [www.oag.state.md.us](http://www.oag.state.md.us); click on “Open Government” link.

<sup>5</sup> City staff has indicated that it can accommodate telephone conferencing as part of the Mayor and Council’s meetings including making it open to the public.

- should a member only be allowed to telephone conference if a quorum is physically present at the meeting?
5. Should telephone conferencing be limited to certain situations (e.g., surgery, illness, funerals, etc.)?
  6. Should telephone conferencing be allowed without any limitations?

#### **IV. Conclusion**

Telephone conferencing will be accommodated as directed by the Mayor and Council.